

# Water Banking and Trust Water Programs: important water management tools

Got water? Need water? Want an opportunity to extend Washington State's limited water supplies for the benefit of people and the environment?

Then read on! There is good news. Water banking – a process to help the transfer of existing water rights to new uses – is now available. The 2009 legislation amending the trust water statute clarifies where water banking can be used, providing more flexibility and certainty for water users.

## Water transfers to meet new water needs

Many Washington watersheds are faced with a shortage of water to meet both existing and future needs of people and the environment. Water transfers are one of the most important sources of water for new uses. Water banking is an important management tool, a way to move water between uses and support stream flows at the same time.

Water banking is easier to manage at the watershed level. The goal is to move water to where it is needed the most. Water scarcity problems can be addressed by **tailoring water banking to your individual watershed and water needs**.

Banked water can be:

- either groundwater (water under the ground) or surface water (water on the surface, such as lakes and streams),
- put into a bank either temporarily or permanently, or
- for either instream or out-of-stream use.

The 2009 legislation (HB 1494/SSB 5583) amending the trust water statute did not define “banking” in order to allow flexibility in the types of banks developed and how they are managed. **Banks, therefore, are a water management tool that can take many forms.** They can be used, for example:

## DEFINITIONS

*The state trust water rights program* was created by the Legislature as a legal mechanism to enable the voluntary transfer of water and water rights to the state, either temporarily or permanently. These rights are held in trust for both instream and out-of-stream uses. The trust water retains the seniority of the original right and is not subject to relinquishment while in trust status. (RCW 90.42)

A **trust water right** is any water right acquired by the state for management in the state's trust water rights program.

## For more information:

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## Water Banking Web site:

<http://www.ecy.wa.gov/programs/wr/market/waterbank.html>

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- as a clearinghouse, bringing together sellers and buyers.
- to offset new water use so other water rights are not negatively affected (mitigation).
- for rotational agricultural pools (groups of farmers working together, alternately letting land go fallow).
- for the state to buy water rights to keep in trust to protect instream flows and resources.

I really appreciate the sponsors of HB1494/SB5583 initiating a statewide conversation on water banking. This is an important tool for managing our water resources in an effective, cooperative way in each unique watershed.

--David Sullivan, Jefferson County Commissioner

## Advantages of water banking

There are many advantages to using the water banking mechanism, in addition to the overall flexibility described above. Key issues clarified in recent legislation include the following.

### Banking allowed statewide

Recent legislation clarified the use of the state trust water rights program for new water banks, and expressly allows banking throughout the state. Previously, water banking had been limited to the Yakima Basin where water has been scarce for decades. The law was ambiguous as to whether the trust water program could be used to establish banking in other parts of the state.

### Water rights maintain original priority date

While water rights are banked in the trust water program they keep their original priority date. A priority date is the water right's effective date, and the user's place in line in water-short times. Banked water rights are protected for new instream and out-of-stream uses.

### Protection from relinquishment

An important advantage of using the trust water program for water banking is that it protects water rights from relinquishment. Relinquishment, also referred to as the "use it or lose it" law, is the loss of all or part of a water right after five or more years of non-use. Although water banking can take place outside the trust water program, the lack of protection from relinquishment limits its usefulness and appeal. Water in a bank is considered an exercised water right. What you put in is what you take out.

... Substitute Senate Bill 5583 will greatly improve the efficiency and efficacy of the Trust Water Right Program for protecting water rights and instream flows and stimulate the ability for communities in watersheds throughout Washington to use water banking to meet the water needs of fish, farms, and people.

--Lisa Pelly, Washington Rivers Conservancy

## Examples of water banking

Water banking is already being used successfully in Washington State, for the benefit of both people and the environment. The following examples show some of the many forms “water banking” can take.

### Dungeness watershed and split-season leases

One innovative way to use water banking is through “split-season leases.” Split-season leases allow a portion of a water right to be used for irrigation early in the season, and keep the water in streams during the period of need for fish. In 2001, and again in 2003 - 2005, the Department of Ecology purchased split-season leases from Dungeness watershed irrigators who volunteered to participate. In 2009 the Washington Water Trust is offering a late season water lease program to irrigators to restore flows to the Dungeness River.

The irrigation season in the Dungeness watershed is from April 15 to September 15, and under the split season lease Ecology leases water to leave in the river during the final six weeks of the season. This creative arrangement reduces agricultural risks, allows farmers to farm through two-thirds of the season and possibly get a third harvest as well, compensates farmers fairly for potential loss of crops, and allows farmers to possibly gain additional profit if they are able to harvest.

... we are working on an instream flow rule in east WRIA 18 [Dungeness watershed] and we are counting on having some ability to exchange water between those who have rights to certain quantities now with those who will need small amounts in the future. We think this [water banking] may be a mechanism that actually restores flows to the river while still providing for residential use of water by people who will move to the watershed. . . Thank you for your help making this important tool available for use in the Dungeness River. . . .

– W. Ron Allen, Chairman, Jamestown S’Klallam Tribe

As a result, the program substantially enhances the viability of agriculture in the area. And in the low flow period from August 1 to September 15, water is left in the river to benefit fish, water quality and other “instream values.” It is a win-win situation for both farmers and fish.

### Walla Walla: mitigation for outdoor watering

The 1977 instream flow rule for the Walla Walla watershed (Water Resources Inventory Area, WRIA, 32) was amended in 2007 to better protect and manage the current conditions of the watershed. To preserve vulnerable water supplies and protect existing water rights, certain new users of permit-exempt wells are required to offset (mitigate) their outdoor watering uses during the low flow period of May 1 to November 30.

To help new users with mitigation, a state-assisted mitigation plan was created through which water is purchased and transferred to the state trust water program and held in a “water exchange” or bank. New home builders have the option to pay a one-time fee to the water exchange (the cost of their portion of water acquired to mitigate) and in turn are allowed to pump water from their well for use outdoors for gardening, watering and swimming pools.

Support for water banking around the state has gone statewide, so we support this idea of authorizing the rest of the state to use water banking. A number of PUDs are interested in using water banking either to implement their watershed plans or for other purposes based on what they are working on in terms of water resources.

-- Bill Clarke, Washington PUD Association.

This “water-for-water mitigation” supports water for people and water for streams.

Participation gives new water users protection that is backed by a senior water right, which replaces the water they use outdoors with an equal amount of water, bucket for bucket, in proximity to the stream, aquifer or drainage zone impacted.

### **Emergency drought transfers for mitigation and environmental purposes**

During the statewide droughts of 2001 and 2005, short-term water right transfers to the state trust water rights program helped stream flows in the Yakima Basin at the same time they helped sustain water supply for junior water users.

For example, part of a water right for irrigation was transferred to the trust water rights program for the 2005 irrigation season only. This water was used to:

1. Improve stream flows downstream from the point of diversion, for the benefit of fish and other instream values, such as wildlife and water quality.
2. Mitigate (offset) for in-house domestic water use of 142 water users whose water would otherwise have been shut off (because water was too limited to fully satisfy senior water rights).

### **For more information**

<http://www.ecy.wa.gov/programs/wr/market/waterbank.html>

Also see contact information on the first page sidebar.